

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA)
VS.) CRIMINAL ACTION NO.
BRIAN SWIENCINSKI,) 4:18-CR-368
SCOTT BREIMEISTER,)
VLADIMIR REDKO, M.D.,)
CHRISTOPHER INCE, M.D., AND)
RONNIE MCADA, JR.) 9:05 A.M.

MISCELLANEOUS HEARING AND PRETRIAL CONFERENCE
BEFORE THE HONORABLE ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE
SEPTEMBER 7, 2022

APPEARANCES:

FOR PLAINTIFF:

MS. ALEZA SIMONE REMIS
MR. DEVON MOREL HELFMEYER
MS. KATHERINE RAUT
Department of Justice
Department of Justice
1400 New York Ave NW
Washington, DC 20005
(202)674-5541

FOR DEFENDANT SWIENCINSKI:

MR. BRANDON NELSON MCCARTHY
Katten Muchin Rosenman, LLP
2121 North Pearl Street, Suite 1100
Dallas, Texas 75201
(214)765-3680

MS. MARY C. FLEMING
Katten Muchin Rosenman, LLP
2900 K Street NW, Suite 200
Washington, DC 20007
(202)625-3754

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1 APPEARANCES CONTINUED:

2 **FOR DEFENDANT BREIMEISTER:**

3 MR. DAN LAMAR COGDELL
4 Jones Walker LLP
5 811 Main Street, Suite 2900
6 Houston, Texas 77002
7 (713)437-1869

8 MR. JOSH BARRETT SCHAFFER
9 Schaffer Law Offices
10 1021 Main Street, Suite 1440
11 Houston, Texas 77002
12 (713)951-9555

13 **FOR DEFENDANT REDKO:**

14 MR. JIM E. LAVINE
15 Zimmermann Lavine & Zimmermann P.C.
16 770 South Post Oak Lane, Suite 620
17 Houston, Texas 77056
18 (713)552-0300

19 MR. BRENT EVAN NEWTON
20 Gerger Hennessy & Martin LLP
21 700 Louisiana, Suite 2300
22 Houston, Texas 77002
23 (713)224-4400

24 **FOR DEFENDANT INCE:**

25 MR. SAMUEL LOUIS
MR. JUSTO A. MENDEZ
Holland & Knight
811 Main Street, Suite 2500
Houston, Texas 77002
(713)821-7000

FOR DEFENDANT MCADA:

MR. JEFFREY J. ANSLEY
MS. ARIANNA G. GOODMAN
MR. SAMUEL M. DEAU
Vedder Price P.C.
100 Crescent Court, Suite 350
Dallas, Texas 75201
(469)895-4800

ALSO PRESENT:

MR. RIDWAN AHMED

1 APPEARANCES CONTINUED:

2 **COURT REPORTER:**

Heather Alcaraz, CSR, FCRR, RMR

3 Official Court Reporter

515 Rusk, Suite 8004

4 Houston, Texas 77002

(713)250-5584

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1 committing tax fraud --

13:59:02 2 **THE COURT:** I'm unclear as to what you're asking me.

13:59:04 3 **MS. REMIS:** I suppose we were overbroad in our notice
4 of intrinsic evidence, and we should probably not have been so
5 overbroad, and maybe the Court can just take this up at the time
6 with more context. I mean, I'm happy to wait it out.

13:59:16 7 **THE COURT:** Let's do that.

13:59:17 8 **MS. REMIS:** Yeah.

13:59:18 9 **THE COURT:** What's next?

13:59:21 10 **MS. REMIS:** I believe that's all from the government,
11 Your Honor.

13:59:24 12 **THE COURT:** Very well. Turning my attention now to
13 defense counsel, are there pretrial items that you -- needs the
14 Court's attention that would impact anyone on either voir dire,
15 opening statement, or the prosecution's case in chief, assuming
16 we get started next week?

13:59:41 17 **MR. MCCARTHY:** Yes, Your Honor. The first one is the
18 -- it's really what I referred to earlier as the 404(b) that we
19 are seeing popping up and she's referred to some of in the
20 exhibits, as well as the witnesses. I'll give you a specific
21 example. State's -- or Government's Exhibit 529 to 533 involves
22 a man named Homer -- it's Zucally [sic], and I'll spell that.
23 It's Z-U-L-A-I-C-A.

14:00:05 24 The reason he's important, Judge, is because the
25 government at least --

1 4:00:10 1 **THE COURT:** Well, let me stop you just -- and maybe
2 this is an issue. You're arguing an objection to an exhibit
3 that has not yet been offered. Am I miss- --

1 4:00:26 4 **MR. MCCARTHY:** That's correct. I'm objecting to this
5 being mentioned in opening statement. That's specifically what
6 I'm objecting to.

1 4:00:32 7 **MS. REMIS:** We're not going to.

1 4:00:33 8 **THE COURT:** Yeah. I mean, by way of opening
9 statement, if there are exhibits that you wish to have admitted
10 that you wish to refer to, I'm happy to deal with that, but I'm
11 entertaining respectfully, if I'm hearing you correctly, an
12 objection to an exhibit that has not yet been offered.

1 4:00:52 13 **MR. MCCARTHY:** And what I would like, because I don't
14 want to throw the skunk in the jury box right out of the gate --

1 4:00:57 15 **THE COURT:** I think counsel just said that she will
16 not be mentioning that exhibit during opening statement.

1 4:01:03 17 **MR. MCCARTHY:** Or that witness.

1 4:01:04 18 **MS. REMIS:** Sorry. May I just say, Your Honor, we --
19 because of the volume of exhibits, we haven't had a chance to
20 actually confer about the objections on the exhibits. I think
21 we can do that, and -- if everybody's okay with that on your
22 end.

1 4:01:16 23 We just -- I would be able to do that.

1 4:01:19 24 **THE COURT:** This is a good point to kind
25 of -- this -- I know that for you to be efficient at what you

1 do, there are certain exhibits that you, perhaps, would like to
2 mention in your opening statement. I also know that there are
3 certain exhibits that there are going to be no objections to.

1 4 : 0 1 : 4 5 4 I would suggest that you meet and confer and have
5 those exhibits indicated as no objection or admitted by consent.
6 I will then sign off on that prior to opening statements
7 starting. Then those exhibits are actually in evidence, and
8 then just leaving for the Court's determination at a later time
9 those exhibits which actually have objections, are in
10 contention, and I'll take those up as needed either prior to
11 opening statement, if you say, "This is an exhibit I need a
12 ruling on because I had hoped to mention it in opening
13 statement," or perhaps when a witness is coming to the stand,
14 and we can do it over a break or the day before and get that
15 resolved.

1 4 : 0 2 : 4 4 16 But I think, by way of efficiency, if you meet and
17 confer on exhibits that you don't have objections to, we can get
18 those admitted, and then you'll know what's in play for purposes
19 of your opening statement.

1 4 : 0 2 : 5 9 20 And I keep a running list on paper as to what's in
21 evidence. And, of course, if it's in evidence, you can pop it
22 up on the screen during opening statement, whatever you like,
23 but it has to be in evidence. Exhibits or any other evidence
24 that is not in evidence, that's not to be discussed in opening
25 statement.

1 Obviously, you're previewing testimony, what you
2 intend to show, and you can talk about it in that fashion, but
3 to flash it up on the screen as if it's in evidence, you don't
4 go that route. So with that being said, we're going to have
5 some time in here, at a minimum through close of business
6 tomorrow because the Court will be awaiting certain affidavits
7 or statements -- I won't call it affidavit -- from a doctor
8 talking about the medical conditions of two witnesses for which
9 the Court needs a ruling on the motion for continuance. But I
10 think that gives you some time to meet and confer about the
11 exhibits, and then the Court can take those up in due course.

12 So with that being said -- I know I turned to the
13 defense. Is there anything else that you need by way of --

14 **MR. MCCARTHY:** Judge, it was really not bringing in
15 evidence of other health care fraud conspiracies not related to
16 this one in front of the jury in opening, because then it's -- I
17 mean, it's --

18 **THE COURT:** Just -- just as I've told the prosecution,
19 we're trying the five-count -- I mean, I'm sorry, five-defendant
20 case. That's the case we're trying.

21 **MR. MCCARTHY:** Yes, Your Honor.

22 **THE COURT:** Anything else from the defense?

23 **MR. COGDELL:** Judge, and I don't want to be the guy
24 asking the teacher if they forgot to give us homework, but I
25 hear you on the affidavits or the physician statements, and